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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER BARNETT,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0611-CR-989

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0605-FC-85151

July 27, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Christopher Barnett (“Barnett”) appeals his convictions in Marion Superior Court of Class C felony forgery and Class D felony counterfeiting. He raises two issues:

- I. Whether the trial court abused its discretion in the admission of evidence; and,
- II. Whether Barnett’s convictions for forgery and counterfeiting violate the double jeopardy provision of the Indiana Constitution.

We affirm in part, reverse in part, and remand.

Facts and Procedural History

On May 11, 2006, Barnett approached Jonathan Barnes (“Barnes”), who was walking home from a Family Dollar store in Indianapolis, and asked him for change for a twenty-dollar bill. Barnes told Barnett that he did not have change. Barnett continued to follow Barnes and ask him for change. At one point, Barnett forced the bill into Barnes’s pocket and asked him to give it to someone standing at the bus stop. Barnett then asked to buy the items Barnes was carrying for twenty dollars. Barnett eventually gave up, and Barnes notified a police officer parked nearby of the incident.

Suspecting that the bill was counterfeit, Indianapolis Police Officer Jack Tindall (“Officer Tindall”) located Barnett a few blocks away. Officer Tindall stopped his car and asked Barnett to come over and talk to him. He then asked Barnett to put his hands on the car. Barnett complied, and as Officer Tindall patted him down for weapons, he noticed a twenty-dollar bill in Barnett’s hand. Officer Tindall asked Barnett about the bill, and Barnett released it onto the car. Officer Tindall noticed that bill “looked different than a normal \$20 bill” and arrested Barnett for battery, counterfeiting, forgery, and possession of paraphernalia found in his pocket. Tr. p. 128.

On May 12, 2006, the State charged Barnett with Class C felony forgery, Class D felony counterfeiting, and Class A misdemeanor possession of paraphernalia. Barnett filed a motion to suppress, which the trial court denied after a hearing. At the conclusion of a bench trial, the trial court convicted Barnett of Class C felony forgery and Class D felony counterfeiting and sentenced him to concurrent terms of four and two years. Barnett now appeals.

I. Admission of Evidence

Although Barnett originally challenged the admission of the evidence through a motion to suppress, he appeals following a completed bench trial and challenges the admission of such evidence at trial. “Thus, the issue is ... appropriately framed as whether the trial court abused its discretion by admitting the evidence at trial.” Washington v. State, 784 N.E.2d 584, 587 (Ind. Ct. App. 2003).

At trial, Barnett and the State stipulated to the entry of evidence and testimony presented at the suppression hearing. Tr. p. 17; Appellant’s App. p. 13. The State then presented, without objection from Barnett, testimony from Officer Tindall as well as the counterfeit twenty-dollar bill recovered from Barnett. Tr. pp. 19-20. At the conclusion of the State’s evidence, Barnett renewed his motion to suppress. However, the failure to make a contemporaneous objection to the admission of evidence at trial results in waiver of the error on appeal. Jackson v. State, 735 N.E.2d 1146, 1152 (Ind. 2000). Thus, Barnett did not properly preserve this issue for appellate review and has waived it.

II. Double Jeopardy

Next, Barnett argues that his convictions for forgery and counterfeiting violate the double jeopardy provision of the Indiana Constitution. In Richardson v. State, 717 N.E.2d 32, 49 (Ind. 1999), our supreme court held that convictions of two or more offenses violate Article 1, Section 14 of the Indiana Constitution “if, with respect to either the statutory elements of the challenged crimes or the actual evidence used to convict, the essential elements of one challenged offense also establish the essential elements of another challenged offense.” See also Guyton v. State, 771 N.E.2d 1141, 1143 (Ind. 2002) (quoting Richardson, 717 N.E.2d at 56, Sullivan, J., concurring) (double jeopardy considerations prohibit “[c]onviction and punishment for a crime which consists of the very same act as another crime for which the defendant has been convicted and punished.”). We review de novo whether a defendant’s convictions violate Indiana’s Double Jeopardy Clause. Spears v. State, 735 N.E.2d 1161, 1166 (Ind. 2000).

The State concedes and we agree that Barnett was convicted of forgery and counterfeiting based on the same act and actual evidence. Therefore, we remand to the trial court with instructions to vacate Barnett’s conviction and sentence for Class D felony counterfeiting. See Richardson, 717 N.E.2d at 54-55.

Affirmed in part, reversed in part, and remanded for disposition consistent with this opinion.

DARDEN, J., and KIRSCH, J., concur.